IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.61 of 2005
Date of Decision.07.12.2010

Milapa Devi widow of Shri Suresh Chand and another

.....Appellants

Versus

Om Parkash son of Daya Ram resident of Raipur Khurd, P.S. Sector 31, Chandigarh (driver of CH-01-D/9816) and others

.....Respondents

Present: Mr. Jagdish Manchanda, Advocate
for the appellants.

Mr. Anupam Sharma, Advocate
for respondent Nos.2 and 3.

Mr. R.M. Suri, Advocate
for respondent No.5.

None for respondent Nos.1, 4 and 6 to 8.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers may be allowed to see the judgment ? **Yes**
2. To be referred to the Reporters or not ? **Yes**
3. Whether the judgment should be reported in the Digest? **Yes**

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K. KANNAN J.(ORAL)

1. The claimant is on appeal challenging the quantum and seeking for enhancement of compensation. The deceased was the driver of Matador Van, which dashed against yet another vehicle coming from the opposite direction. The Tribunal took the dependence on the deceased for the widow and the daughter at Rs.750/- per month, adopted a multiplier of 16 and determined a compensation of Rs.1,50,000/-. It had found that the deceased himself had contributed to the accident in equal measure with the

insured's vehicle and caused 50% abatement of the claim and sliced down the compensation entitlement to Rs.75,000/- with interest @12%. From the language employed by the Tribunal in the award, it is not very clear whether the insurance company was made liable or not.

2. Learned counsel appearing for the appellants would contend that the income must be taken at Rs.1900/- and a further provision of increase in salary for a period of time must also be provided in the manner done by the Hon'ble Supreme Court in ***Sarla Verma Vs. DTC 2009(6) SCC 121***. It is also further contended that the negligence could not have been caused on the deceased and the whole negligence must have been cast only on the driver of the insured's vehicle. The counsel appearing on behalf of the person, who was the owner of the vehicle, would contend that the registered owner, however, was Rockland Leasing Ltd. and he was merely a lessee of the vehicle and consequently, the liability must have been fastened only on the Rockland Leasing Company Ltd.. The insurance company would take a plea that if the vehicle had been granted on lease to respondent Nos.2 and 3, they had not been shown as the lessees in the policy. Therefore, there is no liability for the insurance company to satisfy the claim. As regards the person that drove the vehicle, he had died and the other most competent person to speak about the accident was the driver of the other truck, which was involved in the accident. The Tribunal referred to the photographs and the site plans which had been brought out to find that the accident had taken place on a broad road and it was a case of head on collision and therefore,

it would not be possible to rely on the evidence of either the claimant or the driver, who were tendering charges against each other as being wholly responsible for the accident. It apportioned the liability between the drivers of the respective vehicles and found that the deceased himself contributed to the accident to the extent of 50%. I will make no deviation from the reasoning adopted by the Tribunal and would accept the same.

3. As regards the income of the deceased, I am prepared to go with what was set out in the award and take the income to be Rs.1900/- and although the plea was made by the learned counsel that there was also be a scope for future increase in the manner provided for in ***Sarla Verma Vs. DTC 2009(6) SCC 1***, it will not be possible for me to accomodate such a plea, for ***Sarla Verma*** dispensation has to be understood in the context of how the status of employment had definitely provided for a security of tenure with a sure prospect of increase in salary. It has still not come as practice that in every case where proof of income is possible, there could be always a mandate for providing for future increase. The method of awarding compensation and providing for a lump sum amount makes several approximations and accelerated payment of lump sum of what would otherwise be staggered through the entire life must itself be taken as a compensating factor in certain situations. I would, therefore, take the income at Rs.1900/- per month, provide for a 1/3rd deduction for personal consumption and take the contribution to the family at Rs.1266/-. I would adopt a multiplier of 18 as provided under Schedule II. The total loss of dependence would be

Rs.2,73,456/-. On this I will add Rs.5,000/- towards loss to estate and Rs.2500/- for loss of love and affection for the child and also provide for Rs.2000/- for funeral expenses. In all, the total amount of compensation that will become payable would be Rs.2,82,956/-. I will provide for an abatement of 50% for the contributory negligence which I have retained and the amount that will become payable to the claimant would be Rs.1,41,478/-. The amount in excess over what has been awarded by the Tribunal shall bear interest @6% from the date of the petition till the date of payment.

4. As regards the liability, the contention on behalf of the lessee was that only the registered owner will be liable. It that has to be rejected by reference to definition of Section 2(30) of the Motor Vehicles, which is reproduced as under:-

> "**2(30)** "owner" means a person in whose name a motor vehicle stands registered, and where such person is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire-purchase, agreement, or an agreement of lease or an agreement of hypothecation, the person in possession of the vehicle under that agreement; "

5. This includes a person, who is in actual possession of the vehicle is also the owner. Admittedly at the time of accident, it was only respondents No.2 and 3 who were in exclusive possession of the vehicle and hence owners of the vehicle. The primarily liability will be only on the owners, who were lessees. Learned counsel relies on a judgment of the Division Bench of this Court in ***Vipin Kumar Sharma***

Vs. Jagwant Kaur and others Vol.CXLI(2005-3) PLR 454 that held that reference to owner under Section 168 of the Motor Vehicles Act must be taken to be the registered owner of the vehicle. They were answering the situation in a case where an award had been passed against the registered owner and he had come on appeal when they found that the award passed against a registered owner even in a case of transfer was perfectly justified. In this case, even apart from the registered owner, the lessee is made a party and therefore, the situation that the Division Bench was dealing with does not apply to our case. This is merely an academic exercise. The ultimate party who will become liable for the claim will be insurer, for there was a valid insurance at the relevant time. It is irrelevant whether the policy of insurance made reference to lessee's name, for Section 157 of the Motor Vehicles Act creates a fiction that any transfer which is still not communicated would still come under Section 157(1) of the Motor Vehicles Act. Section 157(2) will have a bearing in a case where the owner was making the claim against the insurance company. As far as the third party is concerned, the entitlement of securing the award and enforcing it against the insurer can never be denied. The liability shall be, therefore, on the insurance company to satisfy the claim of the claimants.

6. Learned counsel appearing for the insurance company would also contend that in such situations, there shall be a liability for the insurer to satisfy only the claim of the third party and it will have a benefit of recovery from the transferee. His contention is also not tenable in view of the law laid down by the Hon'ble Supreme Court in

G. Govindan Vs. New India Assurance Comapany Ltd. AIR 1999 SC 1398. The restriction of liability for insurer for a transferee, who had not informed the fact of transfer and had not followed the procedure laid down under Section 157(2) will apply to cases where the claim emanates from the transferee seeking to take the benefit of policy of insurance. The typical situation would be a claim for own damage to a vehicle made at the instance of a transferee whose transfer is not registered in the manner laid down under Section 151 of the Motor Vehicles Act. So far as the third party's right is concerned, the liability is invariably only on the insurance company if there was a valid policy of insurance with reference to the vehicle that was involved and by the only fact that there had been a transfer, the insurance company will never be able to disown liability or even obtain a right of enforcement of a recovery from subsequent transferee. The transfer of ownership in a vehicle takes place by delivery with reference to Section 19 of the Sales of Goods Act and it will have no bearing to a transfer of ownership contempated under Section 50 of the Motor Vehicles Act which recognizes a procedure for bringing about a transfer of registration of a vehicle. This issue relating to a transfer of ownership of vehicle in the context of the motor vehicle has been dealt with by the Hon'ble Supreme Court in ***Vasantha Vishwanathan and others Vs. V.K. Elayalwara nd others 2001(8) SCC 133*** where the Hon'ble Supreme Court has drawn a distinction between the transfer of registration of a vehicle and transfer of vehicle by delivery.

7. The insurance company is, therefore, bound to satisfy the

award and also to indemnify the transferee/lessee of the vehicle.

The appeal is allowed to the above extent.

(K. KANNAN)
JUDGE

December 07, 2010
Pankaj*